

Appeal No. 18-13592

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ANDREW ADAMS,¹

Plaintiff-Appellee,

v.

THE SCHOOL BOARD OF ST. JOHNS COUNTY, FLORIDA

Defendant-Appellant.

On Appeal From the United States District Court
for the Middle District of Florida
District Court, No. 3:17-cv-00739-TJC-JBT

**EN BANC BRIEF OF *AMICUS CURIAE* THE TREVOR PROJECT
IN SUPPORT OF PLAINTIFF-APPELLEE**

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¹ Plaintiff-Appellee has since changed his name from Drew to Andrew.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(a)(4)(A), the undersigned counsel certifies that The Trevor Project, Inc. (“The Trevor Project”) is a 501(c)(3) organization. The Trevor Project does not have a parent corporation. The Trevor Project is not a publicly traded company, and no publicly held corporation owns 10% or more of its stock.

Dated: November 24, 2021

Respectfully submitted,

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CERTIFICATE OF INTERESTED PERSONS

Pursuant to 11th Cir. R. 26.1-1 through 26.1-3, counsel for *amicus curiae* The Trevor Project certifies that they believe that the Certificates of Interested Persons set forth in the Petition for Panel Rehearing and Rehearing En Banc of Appellant The School Board of St. Johns County, Florida (Aug. 4, 2021), the En Banc Brief of Amici Curiae Medical and Mental Health Professionals Supporting Defendant-Appellant School Board of St. Johns County, Florida (Nov. 8, 2021), the En Banc Brief of Amicus Curiae the American Civil Liberties Union and the ACLU of Florida in Support of Plaintiff and Affirmance (Nov. 19, 2021), the En Banc Brief of Constitutional Accountability Center as Amicus Curiae in Support of Plaintiff-Appellee (Nov. 23, 2021), the En Banc Brief of the National Women's Law Center and 50 Additional Organizations as Amici Curiae in Support of Plaintiff-Appellee (Nov. 23, 2021), and the En Banc Brief of Historians as Amici Curiae in Support of Plaintiff-Appellee (Nov. 23, 2021) are complete, subject to the following persons and entities who may also have an interest in the outcome of this case or appeal:

Added:

The Trevor Project – Amicus Curiae

Shireen A. Barday – Counsel for Amicus Curiae

The undersigned will enter this information in the Court's web-based CIP contemporaneously with filing this Certificate of Interested Persons.

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I. INTEREST OF *AMICUS CURIAE*

Founded in 1998, The Trevor Project Inc. (“The Trevor Project”) is the nation’s largest lesbian, gay, bisexual, transgender, queer, and questioning (“LGBTQ”) youth crisis intervention and suicide prevention organization. It is the only nationwide organization that offers accredited, free, and confidential phone, instant message, and text messaging crisis intervention services for LGBTQ youth. These services are used by thousands of individuals each month. Through analyzing and evaluating data obtained from these services and conducting national surveys, The Trevor Project produces innovative research and insights that bring new knowledge, with clinical implications, regarding issues affecting LGBTQ youth. The Trevor Project respectfully submits this amicus curiae brief in support of plaintiff-appellee, Andrew Adams.

The Trevor Project has a substantial interest in opposing school board actions premised on discrimination against the transgender youth it serves. For decades, The Trevor Project has worked firsthand with transgender youth, many of whom struggle with the stigma of being forced to use a school restroom that conflicts with their gender identity, or have suffered harassment or physical injury when accessing assigned restrooms. The Trevor Project is therefore uniquely aware of the severe, often lifelong mental health effects that discrimination of this form can have on transgender youth and can thus provide a critical perspective for the Court regarding

the damaging results that would continue to flow to transgender youth if this Court's decision is reversed.²

II. ARGUMENT

Transgender people, meaning people whose gender identity³ differs from their sex assigned at birth, have “traditionally been unrecognized, unrepresented, and unprotected.”⁴ Through its decades of service to the LGBTQ community, The Trevor Project has developed a unique understanding of the harmful and lasting effects of government-sponsored discrimination, particularly for transgender youth. The defendant-appellant's policy of requiring transgender students to use restrooms corresponding to their sex assigned at birth or be forced to use separate single-stall

² No party's counsel authored this brief in whole or in part. No party or party's counsel contributed money that was intended to fund preparing or submitting this brief. No person other than amicus curiae, its members, or its counsel contributed money that was intended to fund preparing or submitting the brief.

³ The term “gender identity” refers to an individual's “deeply felt, inherent sense of their gender.” *Edmo v. Corizon, Inc.*, 935 F.3d 757, 768 (9th Cir. 2019). An individual's gender identity is durable and cannot be changed by medical intervention. See *GLAAD Media Reference Guide - Transgender*, GLAAD, <https://www.glaad.org/reference/transgender>. Cisgender individuals have a gender identity aligning with the sex assigned at birth. *Id.*

⁴ *Grimm. v. Gloucester Cty. Sch. Bd.*, 853 F.3d 729, 730 (4th Cir. 2017) (Davis, J., concurring); see also *F.V. v. Barron*, 286 F. Supp. 3d 1131, 1145 (D. Idaho 2018) (“[T]ransgender people are unarguably a politically vulnerable minority.”).

facilities that no one else is required to use is just the latest iteration of discrimination against transgender youth.

The Trevor Project's daily experiences with transgender youth, corroborated by years of research, illuminate the detrimental impact of policies that restrict access to restrooms consistent with their identity. For example, in a national survey of over 40,000 LGBTQ youth conducted by The Trevor Project between December 2019 and March 2020, 61% of the transgender and/or non-binary youth surveyed reported being prevented or discouraged from using a restroom that corresponds to their gender identity.⁵ Transgender and/or non-binary youth who reported experiencing discrimination on the basis of their gender identity (including but not limited to being barred from access to restrooms consistent with their identity) also reported a far greater rate of suicide attempts in the past year than their LGBTQ peers who did not experience this type of discrimination.⁶

⁵ The Trevor Project, *National Survey on LGBTQ Youth Mental Health*, 7 (July 2020), <https://www.thetrevorproject.org/wp-content/uploads/2020/07/The-Trevor-Project-National-Survey-Results-2020.pdf> [hereinafter *The Trevor Project National Survey 2020*].

⁶ *Id.* at 1; see also The Trevor Project, *National Survey on LGBTQ Youth Mental Health*, 13 (May 2021), <https://www.thetrevorproject.org/wp-content/uploads/2021/05/The-Trevor-Project-National-Survey-Results-2021.pdf>.

The St. Johns County School Board’s discriminatory policies forced Andrew Adams to endure not having safe and equal access to restrooms, causing him serious and unreasonable insult, alienation, humiliation, and depression. As Andrew put it: “I was living in every aspect of my life as a boy and now they’re taking that away from me.”⁷

A decision by this Court in favor of the plaintiff-appellee is therefore critical to protect transgender youth. In recent years, federal courts have resoundingly rejected policies compelling transgender students to use facilities inconsistent with their gender identity as unlawful government-sponsored discrimination.⁸ Indeed, as early as last year, the Ninth Circuit emphasized the government’s interest in “assuring that [transgender youth] do not suffer the stigmatizing injury of

⁷ *Adams v. Sch. Bd. of St. Johns Cty., Fla.*, 318 F. Supp. 3d 1293, 1307 (M.D. Fla. 2018).

⁸ *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 619–20 (4th Cir. 2020); *Doe by & through Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 538 (3d Cir. 2018); *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1055 (7th Cir. 2017); *J.A.W. v. Evansville Vanderburgh Sch. Corp.*, 396 F. Supp. 3d 833, 833 (S.D. Ind. 2019); *M.A.B. v. Bd. of Educ. of Talbot Cty.*, 286 F. Supp. 3d 705, 717–26 (D. Md. 2018); *Parents for Privacy v. Dallas Sch. Dist. No. 2*, 326 F. Supp. 3d 1075, 1093 (D. Or. 2018); *Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267, 283 (W.D. Pa. 2017); *Bd. of Educ. of the Highland Local Sch. Dist. v. U.S. Dep’t of Educ.*, 208 F. Supp. 3d 850, 871, 878 (S.D. Ohio 2016).

discrimination by being denied access to multi-user restrooms that match their gender identity.”⁹

A. Transgender Youth Face Ongoing Systemic Discrimination Just For Being Who They Are.

Contemporary science recognizes that being transgender is part of the natural spectrum of human identity and is not a disease, disorder, or illness.¹⁰ Yet recent research conducted by The Trevor Project confirms the challenges and ongoing systemic discrimination that transgender youth experience as a result of just being themselves.

Just this year, The Trevor Project documented the significant association of discriminatory policies and environments on the mental health of transgender youth through a national cross-sectional survey of nearly 35,000 LGBTQ youth between the ages of 13 and 24, with thousands of respondents identifying as

⁹ *Parents for Privacy v. Barr*, 949 F.3d 1210, 1238 n.21 (9th Cir. 2020).

¹⁰ See, e.g., Ben Pickman & Brandon Griggs, *The World Health Organization Will Stop Classifying Transgender People As Mentally Ill*, CNN (June 20, 2018), <https://www.cnn.com/2018/06/20/health/transgender-people-no-longer-considered-mentally-ill-trnd/index.html>; Mary Papenfuss, *World Health Organization Removes Gender Nonconformity From List Of Mental Disorders*, HUFFINGTON POST (May 31, 2019), https://www.huffpost.com/entry/transgender-right-world-health-organization-no-longer-mental-disorder_n_5cf0ade0e4b0e346ce7bbd93.

transgender and/or non-binary.¹¹ It is one of the largest and most diverse surveys covering mental health of LGBTQ youth ever conducted.¹² Of the LGBTQ youth surveyed, 75% reported that they had experienced discrimination based on their sexual orientation or gender identity,¹³ 72% reported symptoms of generalized anxiety disorder in the past two weeks,¹⁴ and 62% reported symptoms of major depressive disorder.¹⁵

Further, The Trevor Project's 2021 survey found that more than half of transgender and/or non-binary youth have seriously considered suicide in the past year, with 20% reporting having actually attempted suicide in the same period.¹⁶ A 2019 survey by The Trevor Project reported similar findings, and also found that of the LGBTQ youth who had experienced discrimination, 22% attempted suicide.¹⁷

¹¹ The Trevor Project, *National Survey on LGBTQ Youth Mental Health*, 2 (May 2021), <https://www.thetrevorproject.org/wp-content/uploads/2021/05/The-Trevor-Project-National-Survey-Results-2021.pdf> [hereinafter *The Trevor Project National Survey 2021*].

¹² *Id.*

¹³ *Id.* at 13.

¹⁴ *Id.* at 4.

¹⁵ *Id.*

¹⁶ *Id.* at 3.

¹⁷ The Trevor Project, *National Survey on LGBTQ Youth Mental Health*, 4 (June 2019), <https://www.thetrevorproject.org/wp-content/uploads/2019/06/The-Trevor-Project-National-Survey-Results-2019.pdf>.

Also in 2019, researchers at the Centers for Disease Control and Prevention (“CDC”) conducted a study that is consistent with many of the findings from The Trevor Project’s survey. The CDC researchers found that transgender teens are at a disproportionately higher risk of being victims of violence and attempting suicide compared to their cisgender peers.¹⁸ Approximately 27% of transgender students said they feel unsafe at school compared to 5% of cisgender males and 7% of cisgender females.¹⁹ More transgender students also reported being bullied at school—over one-third compared to 15% of cisgender males and 21% of cisgender females.²⁰ The CDC researchers also found that more than half of transgender students reported feeling sad or hopeless, and that the risk factors for suicide were 35% for transgender teens as compared to 5.5% of cisgender males and 9% of cisgender females.²¹ Likewise, another study determined that transgender students

¹⁸ Michelle M. Johns et al., *Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students — 19 States and Large Urban School Districts, 2017*, 68 MORBIDITY & MORTALITY WEEKLY REP. 67, 68 (2019), <https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6803a3-H.pdf>.

¹⁹ *Id.* at 69.

²⁰ *Id.*

²¹ *Id.*

were at the highest risk for school safety indicators such as bullying and skipping school due to feeling unsafe.²²

Transgender students experience a greater incidence of emotional distress not because of their gender identity, or any other aspect of who they are, but because of the persistent discrimination by those around them.²³ Feeling unsafe using school facilities helps to explain the widespread inequities between transgender and cisgender students.²⁴ For example, a recent study found that 32% of transgender youth were exposed to victimization, and that victimization alone was predictive of mental health issues such as missing school due to distress and suicidal ideation.²⁵

²² Brittanie Atteberry-Ash et al., *School safety experiences of high school youth across sexual orientation and gender identity*, 104 CHILDREN & YOUTH SERV. REV. 104403 (2019), <https://www.sciencedirect.com/science/article/pii/S0190740919301902>.

²³ Joanna Almeida et al., *Emotional Distress Among LGBT Youth: The Influence of Perceived Discrimination Based on Sexual Orientation*, 38 J. YOUTH & ADOLESCENCE 1001, 1002 (2009), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3707280/pdf/nihms261853.pdf>.

²⁴ Laura J. Wenick et al., *Gender Identity Disparities in Bathroom Safety and Wellbeing among High School Students*, 46 J. YOUTH & ADOLESCENCE 917 (2017), <https://www.ncbi.nlm.nih.gov/pubmed/28361196>.

²⁵ Tyler Hatchel et al., *Minority Stress Among Transgender Adolescents: The Role of Peer Victimization, School Belonging, and Ethnicity*, 28 J. CHILD & FAMILY STUDIES 2467 (2019), <https://link.springer.com/article/10.1007/s10826-018-1168-3>.

Aside from bullying and exclusionary policies, discrimination against transgender and non-binary youth can also come in the form of rhetoric that erases their identity. Unfortunately, the framing of the Court's questions for briefing before the *en banc* court appears to do just that.

Here, the Court asked that the parties focus their briefing on the following questions:

- Does the School District's policy of assigning restrooms based on sex violate the Equal Protection Clause of the Constitution?
- Does the School District's policy of assigning restrooms based on sex violate Title IX of the Education Amendments Act of 1972, 20 U.S.C. § 1681 et seq.?

This framing of the issues, however, misses the crux of the dispute, as it assumes that the parties in this case disagree over whether a school district can assign restrooms on the basis of sex consistent with the Constitution and Title IX. The question is not whether there can be separate boys' and girls' restrooms. The question is instead whether a student who "consistently, persistently, and insistentlly" identifies as one gender may be excluded from the sex-designated restroom for that gender. Put another way, the question here is whether a School District allowing some types of boys but not others to use the boys' restroom violates the Equal Protection Clause of the Constitution and Title IX of the Education Amendments

Act of 1972, 20 U.S.C. § 1681 et seq. By asking whether or not the school can have a rule that the boys' restroom is open to just boys, thereby excluding Andrew, this Court erases Andrew's identity, as it fails to acknowledge that Andrew himself is a boy.

The resulting harm of gender disaffirming language and policies is well documented. For instance, The Trevor Project has seen increases in crisis contacts from transgender youth when invalidating, harmful, and/or disparaging rhetoric is used regarding transgender people.²⁶

On the other hand, it should come as no surprise that support and acceptance benefit transgender youth significantly. Recent research corroborates that supporting transgender youth in accordance with their gender identities is positively correlated with developmentally normative levels of depression and anxiety in those children.²⁷ Expectedly, "allowing children to present in everyday life as their gender identity rather than their natal sex is associated with developmentally normative levels of depression and anxiety."²⁸ When transgender youth are supported by their

²⁶ Think Progress, *Transgender people turned to safety hotlines in droves in response to Trump's erasure memo* (Oct. 30, 2018), <https://archive.thinkprogress.org/trans-erasure-memo-causes-spike-calls-lgbtq-safety-hotlines-70508959958e/>.

²⁷ Kristina R. Olson et al., *Mental Health of Transgender Children Who Are Supported in Their Identities*, 137 PEDIATRICS 1, 5 (2016).

²⁸ *Id.* at 5.

families, “results provide clear evidence that transgender children have levels of anxiety and depression no different from their nontransgender siblings.”²⁹ Furthermore, transgender and non-binary youth who are affirmed simply by having their proper pronouns used by all or most of the people in their lives attempted suicide at half the rate of those who did not have their pronouns respected.³⁰

The Trevor Project’s 2021 national survey also revealed a clear link between affirming support and a decreased risk of suicide: LGBTQ youth who had access to spaces that affirmed their sexual orientation and gender identity reported *lower rates* of suicide attempts.³¹ Similarly, an earlier study conducted by The Trevor Project surveyed over 40,000 LGBTQ youth between December 2019 and March 2020 and found that those who reported having at least one gender-affirming space had 25% reduced odds of reporting a suicide attempt in the past year.³² While only 55% of transgender and non-binary youth reported that their school was gender-affirming,

²⁹ *Id.* at 7.

³⁰ *The Trevor Project National Survey 2020*, supra note 5, at 9.

³¹ *The Trevor Project National Survey 2021*, supra note 11, at 2.

³² The Trevor Project, *The Trevor Project Research Brief: LGBTQ & Gender-Affirming Spaces* (Dec. 2020), <https://www.thetrevorproject.org/2020/12/03/research-brief-lgbtq-gender-affirming-spaces/#:~:text=Affirming%20environments%20are%20associated%20with,a%20past%2Dyear%20suicide%20attempt.>

gender-affirming schools had the strongest association, reducing the odds of reporting a suicide attempt by 34%.³³ These findings clearly demonstrate the benefits that affirming school environments have on a group of youth that faces widespread institutional and daily discrimination.

The Trevor Project's findings are corroborated in peer-reviewed research. Several studies similarly detail the importance of inclusive and affirming policies, programs, and environments for transgender and non-binary youth's health and wellbeing.³⁴ GLSEN, an organization dedicated to eradicating discrimination, harassment, and bullying against LGBTQ youth in K-12 schools, conducted a School Climate Survey in 2019 that corroborates The Trevor Project's findings, revealing that 59.1% of LGBTQ students reported experiencing LGBTQ-related discriminatory policies or practices at school, and that LGBTQ students who did not

³³ *Id.*

³⁴ See Myeshia Price-Feeney et al., *Understanding the Mental Health of Transgender and Nonbinary Youth*, 66 J. ADOLESCENT HEALTH 684, 689–90 (2020), [https://www.jahonline.org/article/S1054-139X\(19\)30922-X/pdf](https://www.jahonline.org/article/S1054-139X(19)30922-X/pdf); Stephen T. Russell et al., *Chosen Name Use Is Linked to Reduced Depressive Symptoms, Suicidal Ideation, and Suicidal Behavior Among Transgender Youth*, 63 J. ADOLESCENT HEALTH 503, 503–05 (2018) (finding that when adjusted for personal characteristics and social support, chosen name usage in multiple contexts is associated with lower depression, suicidal ideation, and suicidal behavior); Erin C. Wilson et al., *The impact of discrimination on the mental health of trans*female youth and the protective effect of parental support*, 20 AIDS AND BEHAVIOR 1, 7–8 (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5025345/>.

experience LGBTQ-related discrimination at school were less likely to have missed school in the past month, had higher GPAs, and had lower levels of depression.³⁵

Policies ensuring equal access to facilities are therefore vital in showing transgender students that their schools recognize their identities and accept them for who they are. Conversely, policies prohibiting equal access to facilities are detrimental to the well-being of transgender students and constitute a serious form of discrimination.

B. The Trevor Project's Data and Experience Serving LGBTQ Youth In Crisis Confirm The Negative Effects of Policies Denying Transgender Youth Access to Restrooms That Correspond with Their Gender Identity.

Over the past two decades, The Trevor Project has counseled thousands of transgender youth who face discrimination on a daily basis at school. In particular, many transgender youth feel stigmatized by school district policies compelling them to use a restroom that conflicts with their gender identity. This is corroborated by peer-reviewed research published by the Journal of Adolescent Health in 2021.³⁶ This study found that 58% of transgender/non-binary youth surveyed reported being

³⁵ GLSEN, *The 2019 National School Climate Survey* (2020), at xix, xx, <https://www.glsen.org/sites/default/files/2020-11/NSCS19-111820.pdf>.

³⁶ Myeshia Price-Feeney et al., *Impact of Bathroom Discrimination on Mental Health Among Transgender and Nonbinary Youth*, 68 JOURNAL OF ADOLESCENT HEALTH 1142, 1142 (2021), [https://www.jahonline.org/article/S1054-139X\(20\)30653-4/fulltext](https://www.jahonline.org/article/S1054-139X(20)30653-4/fulltext).

prevented or discouraged from using a restroom that corresponds to their gender identity.³⁷ Further, one in three transgender and/or non-binary youths who experienced restroom discrimination reported a past-year suicide attempt, with one in five reporting multiple suicide attempts.³⁸ Among the transgender and/or non-binary youth who experienced restroom discrimination, 85% reported depressive moods and 60% seriously considered suicide.³⁹ After adjusting for demographic variables and general discrimination due to one's gender identity, restroom discrimination significantly increased the odds of reporting depressive mood, seriously considering suicide, a suicide attempt, and multiple suicide attempts.⁴⁰

The Trevor Project recognizes and attempts to address the wounds caused by discrimination against the LGBTQ community by providing several crisis intervention and suicide prevention services. Specifically, TrevorLifeline is a telephone counseling service that LGBTQ youth can call for support in times of stress and trouble, and TrevorChat and TrevorText are online chat and text messaging services, respectively, that LGBTQ youth can use as an alternative to

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

speaking on the telephone.⁴¹ The Trevor Project also hosts a social networking site called TrevorSpace that allows LGBTQ youth to connect with one another.⁴² The Trevor Project provides comprehensive training for staff and volunteers who serve as counselors or moderators on its platforms so that they are prepared to help LGBTQ youth facing a difficult period.⁴³

The Trevor Project maintains statistical data regarding the people who use its crisis and suicide prevention services. Many transgender youth who contact The Trevor Project in moments of crisis describe concerns or stresses associated with the lack of safe access to restrooms and other facilities in their schools.⁴⁴ Supervisors for The Trevor Project's crisis services, such as TrevorText and TrevorChat, report that access-related issues come up regularly.⁴⁵ These impressions are borne out by data collected on TrevorLifeline, TrevorText, and TrevorChat, as many transgender youth have reached out to The Trevor Project with specific concerns about access to

⁴¹ The Trevor Project, *Get Help*, <https://www.thetrevorproject.org/get-help/>.

⁴² The Trevor Project, *TrevorSpace*, <https://www.trevorspace.org/>.

⁴³ The Trevor Project, *Volunteer*, <https://www.thetrevorproject.org/volunteer/>.

⁴⁴ This information is derived from anonymized data that The Trevor Project has collected, compiled, and reviewed on its platforms—TrevorLifeline, TrevorText, TrevorChat, and TrevorSpace—pertaining to youth expressing concerns regarding access to restrooms and other facilities in school. In order to protect the privacy of the youth using its services, The Trevor Project does not make this data publicly available.

⁴⁵ *Id.*

restrooms in their high schools.⁴⁶ Counselors regularly direct transgender students to a database of gender-inclusive restrooms when they are out in public.⁴⁷ From January 1, 2021 to October 31, 2021, terms like “bathroom” and “restroom” have appeared on TrevorText and TrevorChat more than 3,200 times.⁴⁸

While each transgender student might have a different way to describe what it is like for them to use the restroom, the common thread that connects them are that these experiences are uniformly significant and often difficult.⁴⁹ For many transgender youth, entering a restroom that is not consistent with their gender identity, including those that are gender neutral, is a source of deep anxiety and dysphoria.

Students also contact The Trevor Project because they are being misgendered, called by the wrong name, and taunted.⁵⁰ One student recounted that whenever they go to the restroom, others look at them “weird,” laugh, and use the wrong name constantly, leading the student to feel afraid that something bad is going to happen.⁵¹

⁴⁶ *Id.*

⁴⁷ Refuge Restrooms, *About REFUGE*, <https://www.refugerestrooms.org/about>.

⁴⁸ *See supra* note 44.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

The Trevor Project has supported numerous transgender students who face this hostile treatment and feel hopeless, distressed, and anxious because of it.⁵²

The harm caused by a lack of access to safe restrooms corresponding with transgender students' gender identity is not limited to just those students. One young person reached out to The Trevor Project because a friend was expelled for using a restroom that aligned with their gender identity.⁵³

The lack of safe access to restrooms that reflect their gender identity is detrimental to the lives of transgender students in high school. Some contacted The Trevor Project to explain that, after coming out to their friends as transgender or gender non-conforming ("GNC"), they were faced with skepticism because they were not using the restroom that aligned with their gender identity.⁵⁴ One student tried to tell his friends that he was transgender, but they told him "he wasn't" because he did not use the boys' restroom.⁵⁵ Similarly, other students report that when they inform classmates of their gender identity, their peers will stare and barrage them

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

with questions such as “Are you sure?,” “What do you have?,” and “What restroom do you use?”⁵⁶

In addition to the fear of social isolation, some users of TrevorLifeline report suffering from significant gender dysphoria when their high schools pressure or force them to use a restroom based on their sex assigned at birth or one that is gender neutral, both of which are gender disaffirming.⁵⁷ For example, one student reported feeling dysphoric for being “forced to use the wrong bathroom [or] one super far away because it was gender neutral.”⁵⁸ This social and systematic rejection caused these transgender youth considerable distress, and they questioned whether they would “ever” be able to safely exist as themselves.⁵⁹

It is deeply important to transgender youth that they are able to safely use restrooms and other school facilities that correspond with their gender identity.⁶⁰ These types of facilities, when they can be accessed consistent with someone’s gender identity, can be a crucial source of validation for who they are and their most deep-seated personal experiences.⁶¹ When such recognition is denied, the

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

transgender students who contact The Trevor Project sometimes express hopelessness that their identities will ever be accepted and well-founded fears about how that denial will affect their safety and ability to participate in the world.⁶²

The Trevor Project's experiences are consistent with social science research conducted by other leading organizations on this issue. In 2017, GLSEN conducted a National School Climate Survey of over 23,000 students between the ages of 13 and 21 from all 50 states, the District of Columbia, and five U.S. territories.⁶³ Nearly 5,100 of respondents identified as transgender, over 2,225 identified as genderqueer, and nearly 1,600 identified as non-binary.⁶⁴ Of the transgender and GNC students surveyed, 46.5% were required to use a restroom that did not align with their gender identity.⁶⁵

GLSEN also found that transgender and GNC students were more likely than cisgender students to avoid restrooms due to safety issues when forced to use the

⁶² *Id.*

⁶³ Joseph G. Kosciw et al., *The 2017 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nation's Schools*, 7 GLSEN (2018), https://www.glsen.org/sites/default/files/2019-10/GLSEN-2017-National-School-Climate-Survey-NSCS-Full-Report_0.pdf.

⁶⁴ *Id.* at 8.

⁶⁵ *Id.* at 42.

restroom of their sex assigned at birth.⁶⁶ One transgender student reported: “I was barred from using the boys’ restroom and when forced to use the girls’ I experienced frequent harassment and physical assault. I frequently went a whole day without using the restrooms, and this has led to severe health complications.”⁶⁷ Researchers examining the effects of high school policies on transgender and GNC youth have also found that restrictive restroom policies create an unsafe environment and have a negative impact on the health outcomes of transgender youth.⁶⁸ A staggering 56% of transgender students reported feeling unsafe using restrooms, 46% had problematic experiences when using a restroom, and only 16% reported having access to restrooms that correspond with their gender identity.⁶⁹ Transgender and GNC students who felt unsafe in restrooms due to appearance were more likely to have lower levels of resilience, greater levels of perceived LGBT stigma, and to report problematic anxiety in the past year than those who felt safe.⁷⁰ Furthermore, single-user or gender neutral restrooms were an ineffective alternative because they

⁶⁶ *Id.*

⁶⁷ *Id.* at 15.

⁶⁸ Lance S. Weinhardt et al., *Transgender and Gender Nonconforming Youths’ Public Facilities Use and Psychological Well-Being: A Mixed-Method Study*, 2 *TRANSGENDER HEALTH* 140, 148–49 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5685206/>.

⁶⁹ *Id.* at 144.

⁷⁰ *Id.* at 148.

risk “exposing students to unwanted attention . . . and being seen as different from their peers.”⁷¹

The common theme that The Trevor Project has witnessed is that transgender youth feel that policies forcing them to use the restroom reflecting their sex assigned at birth means that they are unwanted burdens and unwelcome in society. They feel that their school does not value them and does not want them to exist. Indeed, new evidence has shown that when transgender students have the right to safely access restrooms consistent with their gender identity, they report higher levels of mental health, self-esteem, and academic success.⁷² Transgender youth should be allowed to simply live as who they really are instead of fearing that government-sanctioned discrimination against them will incite their classmates or teachers to bully them and treat them without regard for their identity or dignity. These youth deserve the same respect, opportunities, and access to school facilities as their peers.

⁷¹ *Id.* at 147.

⁷² See Kosciw, *supra* note 63, at 15, 49, 79–80; Carolyn M. Porta et al., “*Kicked out*”: *LGBTQ youths’ bathroom experiences and preferences*, 56 J. ADOLESCENCE 107, 107 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5346479/> (finding that gender-neutral bathrooms foster a sense of safety and inclusivity).

C. Federal Courts Agree That Policies Denying Transgender Youth Access to Restrooms That Correspond with Their Gender Identity Causes Lasting Stigma and Injury.

Federal courts have echoed the widespread professional consensus in finding that policies restricting access to restrooms corresponding with transgender students' gender identities impose a significant and direct harm on them, particularly to their physical and mental health.

For instance, with respect to a similar policy in *Grimm v. Gloucester Cty. Sch. Bd.*, 400 F. Supp. 3d 444, 462-63 (E.D. Va. 2019), the district court held, “there is no question that the Board’s policy discriminates against transgender students on the basis of their gender nonconformity” and “transgender status in violation of Title IX.” The court found that the defendant’s policy perpetuated harm and “inflicted grief, pain, and suicidal thoughts,” as “[t]ransgender students are singled out, subjected to discriminatory treatment, and excluded from spaces where similarly situated students are permitted to go.” *Id.* at 457, 463. Later, in affirming the lower court decision, the Fourth Circuit stated that it “join[s] a growing consensus of courts” by deciding that “equal protection and Title IX can protect transgender students from school restroom policies that prohibit them from affirming their gender.” *Grimm v. Gloucester Cty. Sch. Bd.*, 972 F.3d 586, 593 (4th Cir. 2020).

Across the country, other federal courts have come to the same conclusion emphasizing the lasting stigmatic injury of restrictive restroom policies upon transgender students. For example, in *Doe by & through Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 538 (3d Cir. 2018), *cert. denied*, 139 S.Ct. 2636 (2019), the Third Circuit affirmed the lower court’s rejection of a challenge to a school district’s policy allowing transgender students to access restrooms consistent with their gender identity. The court held that the policy was “narrowly tailored to serve a compelling governmental interest,” and that a contrary policy forcing transgender students to use separate facilities “would very publicly brand all transgender students with a scarlet ‘T,’ and they should not have to endure that as the price of attending their public school.” *Id.* at 530–31.

In *Parents for Privacy v. Dallas Sch. Dist. No. 2*, 326 F. Supp. 3d 1075, 1093 (D. Or. 2018), *affirmed*, *Parents for Priv. v. Barr*, 949 F.3d 1210 (9th Cir. 2020), *cert. denied*, 141 S.Ct. 894 (2020), the district court upheld a school district’s policy of allowing transgender students to use the facilities of their choice. The court reasoned that “[f]orcing transgender students to use facilities inconsistent with their gender identity would undoubtedly harm those students and prevent them from equally accessing educational opportunities and resources.” *Id.* at 1106. Such a “policy would punish transgender students for their gender nonconformity and constitute a form of sex-stereotyping.” *Id.*

Indeed, the district court in *M.A.B. v. Bd. of Educ. of Talbot Cty.* found that a school's policy prohibiting a transgender male student from using the boys' restrooms violated Title IX and the Equal Protection Clause. 286 F. Supp. 3d 705, 723–26 (D. Md. 2018). The court underscored that barring the student from facilities consistent with his gender identity “harms his health and well-being,” and “interferes with his social transitioning.” *Id.* at 724–25.

Courts have found that restrictive restroom policies not only cause transgender students psychological harm, but also physiological harm. In *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, a transgender student who was prohibited from using the boys' restroom suffered from fainting and dizziness because he “restricted his water intake and attempted to avoid using any restroom.” 858 F.3d 1034, 1041 (7th Cir. 2017); *see also J.A.W. v. Evansville Vanderburgh Sch. Corp.*, 396 F. Supp. 3d 833, 833 (S.D. Ind. 2019) (relying on *Whitaker*, the school's practice of requiring students to use a restroom that did not conform with their gender identity violated Title IX and equal protection). The student in *Whitaker* “suffered from stress-related migraines, depression, and anxiety because of the [school] policy's impact on his transition and what he perceived to be the impossible choice between living as a boy or using the restroom,” and “[h]e even began to contemplate suicide.” 858 F.3d at 1041. Although the school provided the option of using gender-neutral restrooms, they were “on the opposite side of campus from

where his classes were held” and resulted in him missing class time because of the location and being further stigmatized as he was the only one with access to the restrooms. *Id.* at 1041–42. In light of the “irreparable harm” caused by the school’s restrictive restroom policy, the Seventh Circuit affirmed the lower court’s order granting a preliminary injunction to the transgender student. *Id.* at 1044–45, 1055.

Just as in *Whittaker*, a Pennsylvania district court held that the transgender students “have suffered and will continue to suffer immediate and irreparable harm” absent a preliminary injunction allowing the transgender students to use “restrooms consistent with their gender identities.” *Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267, 283 (W.D. Pa. 2017). In *Evancho*, the high school’s policy change segregated transgender students from their peers and resulted in their being “subject to several episodes of . . . untoward or harassing conduct by some other students based on their gender identities.” *Id.* at 282. As such, the transgender students were “marginalized . . . causing them genuine distress, anxiety, discomfort and humiliation.” *Id.* at 294.

Likewise, an Ohio district court made similar findings in granting a preliminary injunction against a school’s policy. *See Bd. of Educ. of the Highland Local Sch. Dist. v. U.S. Dep’t of Educ.*, 208 F. Supp. 3d 850, 871, 878 (S.D. Ohio 2016). It found irreparable harm in “[t]he stigma and isolation” the transgender student felt in being “singled out and forced to use a separate restroom.” *Id.* The

student often went “the entire day without using the restroom,” which “impair[ed] her ability to focus on learning.” *Id.* at 871. As a consequence of this stigmatization, she “began to suffer from extreme anxiety and depression” and “was hospitalized for suicidal ideation and depressed mood.” *Id.* at 856.

Transgender students are simply “young people seeking to do what young people try to do every day—go to school, obtain an education, and interact as equals with their peers.” *Evancho*, 237 F. Supp. 3d at 301–02. The day-to-day harm that transgender youth endure because of the perpetuation of institutional discrimination and the stigma of being singled out for differential treatment based on their gender identity cannot be allowed to stand.

III. CONCLUSION

The Trevor Project hears regularly from the transgender youth it serves that being able to access restrooms that align with their gender identity is vital to their health and well-being. To be denied fair and equal treatment on this basis can have lasting consequences on their mental health. Transgender youth deserve the same chance as others to be who they are and to participate fully in our society.

For the foregoing reasons, The Trevor Project requests that this Court affirm its previous decision in favor of Plaintiff-Appellee.

Dated: November 24, 2021

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

On behalf of *amicus curiae* The Trevor Project, I hereby certify pursuant to Federal Rule of Appellate Procedure 32(g)(1) that the foregoing brief is proportionally spaced, has a typeface of 14 points or more, is set in Times New Roman, and contains 5,447 words, as counted by Microsoft Word, excluding the items that may be excluded under Federal Rule of Appellate Procedure 32(f).

Dated: November 24, 2021

By: /s/ Shireen A. Barday
Shireen A. Barday

CERTIFICATE OF SERVICE

I, Shireen A. Barday, a member of the Bar of this Court, hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the appellate CM/ECF system on November 24, 2021. I certify that to my knowledge all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: November 24, 2021

By: /s/ Shireen A. Barday
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